

1 BRENDAN M. KUNKLE (SBN 173292) bkunkle@abbeylaw.com

2 MICHAEL D. GREEN (SBN 214142) mgreen@abbeylaw.com

3 **ABBEY, WEITZENBERG, WARREN & EMERY, P.C.**

4 100 Stony Point Road, Suite 200

5 Santa Rosa, CA 95401

6 Telephone: 707-542-5050

7 Facsimile: 707-542-2589

8 *Attorneys for Fire Victim Claimants*

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **In re:**

14 **PG&E CORPORATION**

15 -and-

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**

18 **Debtors.**

19 ☐ Affects PG&E Corporation

20 ☐ Affects Pacific Gas and Electric Company

21 ☒ Affects both Debtors

22 **All papers shall be filed in the Lead Case,*
23 *No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOFS OF CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
BRENDAN M. KUNKLE**

Date: December 15, 2020

Time: 10:00 a.m.

Dept: Telephonic/Video Appearances Only

United States Bankruptcy Court

450 Golden Gate Ave.

Courtroom 17, 16th Floor, San Francisco, CA

Judge: Hon. Dennis Montali

Objection Deadline: December 8, 2020

24 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
25 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
26 PARTIES:

27 Abbey, Weitzenberg, Warren & Emery (“Abbey Law”), together with several other firms,
28 represent thousands of victims of the Fires started by PG&E in 2017 (generally referred to as the
“North Bay Fires”) and 2018 (“Camp Fire”).

Abbey Law respectfully files this motion (“Motion”) to allow late filing of proofs of claim
and deem the proofs of claim as having been timely filed for the fire victims (“Movants”) listed

1 in Exhibit A, attached hereto.

2 **I. SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. In this case, Movants did not file timely proof of claim forms because they reasonably
5 did not know they had valid claims for damages until after the Claims Bar Date. Movants are
6 young adults that lived with their parents when their family's homes were destroyed by the North
7 Bay Fires. Movants believed they did not have a valid claim because they were not the owners of
8 the burned homes. After the Claims Bar Date, Movants learned that they had valid claims based
9 on the destruction of their personal property and their evacuation experience. Because there is no
10 danger of prejudice to the Debtors as Debtors' estates are solvent, and all creditors stand to be
11 paid, the Motion should be granted and Movants should be allowed to file Proofs of Claim and
12 have them deemed as timely. This Court must determine whether to grant the Motion.

13 **II. FACTUAL BACKGROUND**

14 **A. Movants' Claims Arising From North Bay Fires**

15 Movants are young adults that lived at their parents' home at the time of the 2017 North
16 Bay Fires. Movants' permanent residence at the time was their parents' home. Each of the
17 Movants' parents' homes, and Movants' personal property within those homes, were destroyed by
18 the fire. Movants were present at their parents' homes on the night of the fire and evacuated.

19 Prior to the Claims Bar Date on December 31, 2019, Movants believed they did not have a
20 claim because they were not the owners of the burned homes. Subsequently, Movants learned that
21 they had a valid claim despite not owning their homes because their personal property was
22 destroyed and they evacuated. Movants then contacted Abbey Law to submit a claim. As a result,
23 proof of claim forms were not filed on behalf of Movants before the Claims Bar Date.

24 **B. General Procedural Background**

25 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company
26 ("Debtors" or "PG&E") commenced with the Court voluntary cases ("Chapter 11 Cases") under
27 Chapter 11 of the United States Code ("Bankruptcy Code"). PG&E's Chapter 11 filings were
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1 necessitated by a confluence of factors resulting from catastrophic fires that occurred in Northern
2 California prior to the Petition Date, and PG&E's potential liabilities arising therefrom.

3 Since, the Debtors continue to operate their businesses and manage their properties as
4 debtors in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108, the Debtors' Chapter 11 Cases are
5 being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal
6 Rules of Bankruptcy Procedure ("FRBP").

7 **C. Plan, Disclosure Statement, and the Solicitation Procedures Motion**

8 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter 11 Plan
9 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31,
10 2020.

11 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement for the
12 Amended Plan.

13 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of an Order (I)
14 Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (II)
15 Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving Forms of
16 Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Related Relief (the
17 "Solicitation Procedures Motion").

18 On March 16, 2020, as Dk. No. 6320, the Debtors filed the Amended Chapter 11 Plan
19 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16,
20 2020.

21 On March 17, 2020, the Solicitations Procedures Motion was approved and the
22 Disclosure Statement and Plan circulated for votes.

23 The Debtors Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint
24 Chapter 11 Plan of Reorganization Dated March 16, 2020 [Docket No. 6320] was amended on
25 May 22, 2020 [Docket No. 7521], and on June 19, 2020 [Docket No. 8048].

26 On June 20, 2020, an order was issued confirming Debtors' and Shareholder Proponents'
27 Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 [Docket No. 8053].
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1 of the bankruptcy but, due to some external reason, failed to file a proof of claim or did not realize
2 that she had to, before the bar date. *See, e.g., ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d
3 996, 1003-07 (9th Cir. 2006) (applying the *Pioneer* factors).

4 Here, consideration of all four *Pioneer* factors—as well as a fifth engrafted onto the
5 *Pioneer* analysis by some courts—weighs in favor of allowing Movants to file late proofs of
6 claim.

7 The first *Pioneer* factor weighs overwhelmingly in Movants’ favor because there is no
8 danger of prejudice to the Debtors in this case. Debtors’ estates are solvent, and all creditors stand
9 to be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In*
10 *re Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate
11 is solvent, “the proper remedy for a late filing is not the expungement of a claim, but its allowance
12 as a tardily filed claim only.).

13 The second *Pioneer* factor is also satisfied by Movants because the length of the delay in
14 filing Proof of Claim forms was minimal and will not impact the bankruptcy proceeding. Movants
15 contacted Abbey Law as soon they realized they had a valid claim despite not owning their home
16 based on the destruction of their personal property and evacuation experience. Counsel for
17 Movants then filed the subject motion expeditiously. The claims process is ongoing and, as such,
18 Movants’ delay in filing their claims is negligible relative to the bankruptcy proceeding.
19 Permitting Movants to file late claims will have no effect on the bankruptcy given its current
20 status.

21 The third and fourth *Pioneer* factors, the reasonableness in the delayed filing and whether
22 Movants acted in good faith, are also met. Movants contacted the Abbey Firm as soon as they
23 learned that they had valid claims. Unfortunately, Movants learned about the validity of their
24 claims after the Claims Bar Date. Movants’ delay in learning that they had claims despite not
25 owning their homes was reasonable and in good faith. Movants were all young adults when the
26 Claims Bar Date passed and could not reasonably be expected to know that they had valid claims
27 despite their parents’ ownership of the destroyed home. Movants’ delay was therefore the result
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1 of reasonable and excusable neglect.

2 Lastly, any prospect of prejudice beyond solvency is unlikely given (a) distributions have
3 not been made; and (b) the value of Movants' claims relative to the value of Debtors' estates is
4 low. *See, e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim
5 in relation to the estate is a consideration in determining prejudice).

6 **IV. CONCLUSION**

7 For the reasons set forth above, Movants respectfully request that this Court enter an order
8 pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 9 1. Granting the Motion;
- 10 2. Finding that Movants be allowed to file Proofs of Claim and deem them as having been
11 timely filed;
- 12 3. Granting such other or further relief as the Court deems just and proper.

13
14 DATED: November 4, 2020

ABBEY, WEITZENBERG, WARREN & EMERY PC

15
16 By: /s/ Brendan M. Kunkle
17 BRENDAN M. KUNKLE (SBN 173292)
18 **ABBEY, WEITZENBERG, WARREN &**
19 **EMERY PC**
100 Stony Point Road, Suite 200
Santa Rosa, CA 95401
Telephone: 707-542-5050
Facsimile: 707-542-2589
bkunkle@abbeylaw.com
Attorneys for Numerous Fire Claimants

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/s/ Brendan M. Kunkle
Brendan M. Kunkle

1 **DECLARATION OF BRENDAN M. KUNKLE**

2 I, BRENDAN M. KUNKLE, say and declare as follows:

3 1. I am an individual over 18 years of age and competent to make this Declaration.

4 2. If called upon to do so, I could and would competently testify as to the facts set
5 forth in this Declaration.

6 3. I am an attorney at law duly admitted to practice before this Court and courts of the
7 State of California.

8 4. I am an attorney with the law firm of Abbey, Weitzenberg, Warren & Emery,
9 attorneys of record for hundreds of victims of the fires started by PG&E in 2017 (the numerous
10 fires generally referred to as the “North Bay”), and 2018 (“Camp Fire”).

11 5. I make this Declaration in support of the motion to allow late filing of proofs of
12 claim (“Motion”) on behalf of the fire victims (“Movants”) listed in Exhibit A, attached hereto.
13 Movants are represented by Abbey, Weitzenberg, Warren & Emery.

14 6. Movants did not file claims before the December 31, 2019 claims bar date
15 due to reasonable and excusable delay and should be allowed to file proofs of claim after the bar
16 date.

17 7. Movants are young adults that lived at their parents’ home at the time of the 2017
18 North Bay Fires. Movants’ permanent residence at the time was their parents’ home. Each of the
19 Movants’ parents’ homes, and Movants’ personal property within those homes, were destroyed by
20 the fire. Movants were present at their parents’ homes on the night of the fire and evacuated.

21 8. Prior to the Claims Bar Date on December 31, 2019, Movants believed they did not
22 have a claim because they were not the owners of the burned homes. Subsequently, Movants
23 learned that they had a valid claim despite not owning their homes because their personal property
24 was destroyed and they evacuated. Movants then contacted Abbey Law to submit a claim. As a
25 result, proof of claim forms were not filed on behalf of Movants before the Claims Bar Date.

1 I declare under penalty of perjury under the laws of the State of California that the forgoing
2 is true and correct and executed this 4th day of November 2020.

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4 /s/ Brendan M. Kunkle
5 BRENDAN M. KUNKLE
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EXHIBIT A

LIST OF MOVANTS

1. Gross, Kai
1328 Cashew Rd
Santa Rosa, CA 95403-1543
Date of Birth: October 7, 1997
Parent: Kathleen Gross
2. Guanella, Breanne
2683 Bennett Ridge Rd
Santa Rosa CA 95404-9525
Date of Birth: February 12, 2009
Parents: Raymond and Kirsten Guanella
3. Guanella, Joseph
2683 Bennett Ridge Rd
Santa Rosa, CA 95404-9525
Date of Birth: February 12, 2009
Parents: Raymond and Kirsten Guanella
4. Huber, Alexander A.
2166 Wedgewood Way
Santa Rosa, CA 95404-7676
Date of Birth: April 28, 1989
Parent: Brenda Gormley
5. Huber, Sean-Paul G.
2166 Wedgewood Way
Santa Rosa, CA 95404-7676
Date of Birth: December 7, 1984
Parent: Brenda Gormley
6. Watanabe, Emi
4696 Paulette Place
Santa Rosa CA 95403
Date of Birth: June 17, 2005
Parents: Ryan and Kristina Watanabe
7. Watanabe, Amaya
4696 Paulette Place
Santa Rosa CA 95403
Date of Birth: April 10, 2001
Parents: Ryan and Kristina Watanabe